

To: House Business & Labor Committee
Re: HB322

Madam Chair & Members of the Committee:

I apologize for not being able to attend the hearing today. Please accept my testimony below as part of the record.

I'm writing as a private citizen.

To remind you, when I testified on HB73, the issues of overlap of scope is different when it comes to healthcare boards. It is clear when someone is doing plumbing or electrical work, not so when it comes to healthcare. This same argument holds true here too.

Rather than make this letter lengthy and drawn out with talking points, please do one of the following:

First Choice: add amendments that exempt ethically practicing alternative and complementary health care practitioners. It's a fair trade-off: if you are going to give more power to the boards, clarify who they can and can't go after. Again, this language is modeled after what the courts have already decided. Please use amendment HB007302.abc as your guide for the exemption.

Second Choice: Make the bill apply ONLY to non-healthcare boards AND restore the original statutory language in both subsections (3) on page 1 and page 3. For the first part, I encourage you to adopt similar language that you adopted for HB73: HB007303.abc. Secondly, it is critical to restore the original statutory language in these subsections because the language changes in HB322 take away the defense that ethical practitioners can use to defend themselves from boards overstepping their bounds. Restoring the original language will not impede a board's ability to successfully go after someone who deserves it, but allows those who don't deserve it a method of defense.

3rd Choice: Do NOT pass the bill. If you choose not to amend HB322, please do not pass the bill. A traffic violation or a game (wildlife) violation are very different from an unlicensed practice violation for healthcare professions. If someone is truly a danger to the public, the boards will have no problem using current remedies to stop the person from practicing. The remedy that HB322 affords only encourages boards to overstep their power. See the example below:

Here's a new example that I did not cover in my testimony for HB73, as I just recently learned about it.

Here's an excerpt of the board minutes posted on-line for the Board of Medical Examiners for 11/19/2010:

"Mr. Ben Kahn was not present for the meeting. Ms. Anne O'Leary reported that Mr. Kahn has been advertising on his website that he specializes in nutrition. He does not hold a license as a nutritionist through the Montana Board of Medical Examiners.

MOTION: Dr. James Upchurch made a motion to issue a cease and desist against Mr. Kahn telling him that he needs to change the text of his commercial material because he is not a licensed professional and cannot specialize in nutrition. Ms. Pat Bollinger seconded the motion. The motion passed unanimously."

My view on the matter: MCA 37-25-304 exempts "(7) a person from furnishing general nutrition information or disseminating literature if he does not represent himself to the public as a dietitian or a nutritionist". Saying he is

an expert in nutrition is NOT the same as saying that he is a nutritionist. There are many people who have studied diet and nutrition and can provide expert general education about nutrition. There is nothing in the record that points to Mr. Kahn using the title "nutritionist," which is restricted (MCA 37-25-305). Nor is there anything in the record that points to Mr. Kahn providing anything other than general nutritional education. There is nothing in statute that allows the board to "own" the term nutrition. Given these items, if indeed the board sent him a C&D on this basis alone, without determining whether or not he was administering specific nutritional advice, the board overstepped its bounds.

My main issue here, is that most practitioners have no idea what their rights are and do not want to spend the money to stand up to the boards. It's much cheaper just to take the word "nutrition" off a website than it is to make a stand, and that's just not right. It's like turning over your lunch money to the schoolyard bully because it's much easier than being beat up. Boards shouldn't be able to bully people because they can.

Please don't give them the tools to harm ethically practicing alternative and complementary healthcare providers.

Please either amend HB322 or give it a do NOT pass.

Sincerely,



Deborah Kimmet

Volunteer liaison

Business League for Massage Therapy & Bodywork

Montana Health Freedom Coalition

544-4704